

IN THE BOARD OF SUPERVISORS

County of San Luis Obispo, State of California

_____ day _____, 20__

PRESENT: Supervisors

ABSENT:

RESOLUTION NO. _____

RESOLUTION ADOPTING A LABOR COMPLIANCE PROGRAM FOR PROJECTS IN CONFORMANCE WITH PUBLIC RESOURCE CODE 75075

The following resolution is now offered and read:

WHEREAS, Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006, was approved by voters in November 2006; and

WHEREAS, Proposition 84 provides \$5.388 billion in funding for State and Local water resource projects; and

WHEREAS, the County has sought and received funding for Proposition 84 funds for water resource project implementation; and

WHEREAS: the Public Resource Code Section 75075 requires local governing boards to adopt a Labor Compliance Program, consistent with the California Labor Code, for use on Proposition 84 funded projects; and

WHEREAS, the a Labor Compliance Program seeks to ensure that workers employed by contractors on these projects are paid according to minimum labor standards; and

WHEREAS, the County of San Luis Obispo is prepared for use the attached Local Compliance Program for Proposition 84 funded projects.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, that:

1. The attached Labor Compliance Program for San Luis Obispo County is hereby adopted for projects in conformance with Public Resource Code Section 75075 implemented by the County.

2. The Director of Public Works, or his designee, is authorized to submit the LCP to the California Department of Industrial Relations (DIR) for its approval, and may sign any application documents required by DIR to obtain DIR approval of the LCP
3. The Director of Public Works is authorized to engage outside specialized consultant to provide any necessary oversight and enforcement required under Proposition 84, the adopted Labor Compliance Program, and/or any subsequent direction of the DIR.

Upon motion of Supervisor _____, seconded by Supervisor _____, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing Resolution is hereby adopted on the ____ day of _____, 20__.

Chairperson of the Board of Supervisors

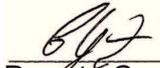
ATTEST:

Clerk of the Board of Supervisors

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: 
Deputy County Counsel

Dated: January 16, 2014

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STATE OF CALIFORNIA, }
County of San Luis Obispo, ss.

I, _____, County Clerk and ex-officio Clerk of the Board of Supervisors, in and for the County of San Luis Obispo, State of California, do hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of Supervisors, as the same appears spread upon their minute book.

WITNESS my hand and the seal of said Board of Supervisors, affixed this _____
day of _____, 20 _____.

(SEAL)

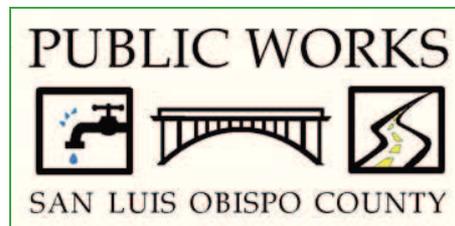
County Clerk and Ex-Officio Clerk of the Board
of Supervisors

By _____
Deputy Clerk.

San Luis Obispo County
DEPARTMENT OF PUBLIC WORKS



Labor Compliance Program
For Projects Under
Public Resource Code Section 75075
January 2014



San Luis Obispo County
Department of Public Works
County Government Center Room 207
San Luis Obispo, CA 93408
Phone 805/781-5252
Fax 805/781-1229

Paavo Ogren
Director

Dave Flynn
Deputy Director

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SECTION I
INTRODUCTION

The San Luis Obispo County Department of Public Works institutes this Labor Compliance Program (“LCP”) for the purpose of implementing its policy relative to the labor compliance provisions of state and federally-funded public works contracts and specifically to comply with the provisions of Labor Code Section 1771 pertaining to the use of public funds for Proposition 84 funded projects subject to Public Resource Code 75075. This LCP contains the labor compliance standards required by state and federal laws, regulations, and directives, as well as the County Department of Public Works’ contract provisions.

A Labor Compliance Program shall have a duty to the Director of the Department of Industrial Relations, to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code and these regulations in a manner consistent with the practice of the Labor Commissioner. It is the practice of the Labor Commissioner to refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions. It is also the practice of the Labor Commissioner to be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code Section 1742(b) and Sections 17201-17270 of Title 8 of the California Code of Regulations

The California Labor Code Section 1770, et seq., and the Public Contracting Code Section 20133 requires that contractors on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research (“DLSR”).

The County Department of Public Works adheres to the statutory requirements as set forth in Labor Code Section 1771.5(b). Further, it is the intent of the County Department of Public Works to actively enforce this Labor Compliance Program, on projects subject to Public Resource Code 75075, by monitoring applicable County Department of Public Works construction sites for the payment of prevailing wage rates, and by requiring contractors and subcontractors having workers on applicable County Department of Public Works sites to submit copies of certified payroll records demonstrating their compliance with the payment of prevailing wage rates.

It is the responsibility of the County Department of Public Works Labor Compliance Program to enforce prevailing wage requirements, consistent with the policy of the state as expressed in Labor Code Section 90.5(a). A Labor Compliance Program shall take reasonable, vigorous, and prompt action to (1) determine whether violations exist, and (2) enforce compliance, including through imposition of appropriate penalties and formal enforcement action, when violations are found. A Labor Compliance Program shall neither avoid use of its enforcement authority based on cost considerations nor shall it use that authority in an unreasonable manner to gain leverage over a contractor or subcontractor. Unreasonable use of enforcement authority includes, but is not necessarily limited to, prolonged or excessive withholdings of contract payments without making a determination that a violation has occurred.

Should applicable Sections of the Labor Code or Title 8 of the California Code of Regulations undergo alteration, amendment, or deletion, the County Department of Public Works will modify the affected portions of this program accordingly.

The County of San Luis Obispo establishes the following labor compliance program, which can be used for Proposition 84 funded projects as well as any future state funded project that requires such a program under Public Resource Code Section 75075, which would be implemented, monitored and administered by a third party labor compliance consulting firm as permitted under position 84 . The selected consultant would serve the role of Labor Compliance Officer as stated in the program.

SECTION II

LABOR COMPLIANCE PROGRAM

ARTICLE I

PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS

State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720 et seq., and include, but are not limited to, such types of work as construction, alteration, demolition, repair, or maintenance work. The Division of Labor Statistics and Research (DLSR) predetermine the appropriate prevailing wage rates for particular construction trades and crafts by County Department of Public Works

The San Luis Obispo County Department of Public Works institutes this general Labor Compliance Program "LCP" for the purpose of implementing its policy relative to the labor compliance provisions of State and Federally-funded public works contracts and the requirements of the Public Contracting Code Section 20133.

As provided in Labor Code Section 1771.5, if a County of San Luis Obispo public works project would be otherwise subject to prevailing wage requirements except that the value is \$25,000 or less when the project is for construction or installation work or of \$15,000 or less when the project is for alteration, demolition, repair, or maintenance work, then the County shall not require payment of the general rate of per diem wages or the general rate of per diem wages for holiday and overtime work for such projects.

A project for construction, installation, alteration, demolition, repair, or maintenance work shall be identified as such in the call for bids, and in the contract or purchase order.

If the amount of a contract subject to Labor Code Section 1771 is changed and, as a result, exceeds the applicable limit under which the payment of the general rate of per diem wages is not required, workers employed on the contract after the amount due the contractor has reached the applicable limit shall be paid the general rate of per diem wages for regular, holiday or overtime work, as the case may be.

ARTICLE II

COMPETITIVE BIDDING ON SAN LUIS OBISPO COUNTY DEPARTMENT OF PUBLIC WORKS CONTRACTS

The San Luis Obispo County Department of Public Works publicly advertises upcoming public works projects to be awarded according to a competitive bidding process. All County Department of Public Works bid advertisements (or bid invitations) and public works contracts shall contain appropriate language concerning the requirements of the Labor Code. In the case of a contract for which there is no Call for Bids, the applicable date shall be the date of the award of the contract.

Notice of approval of the County Department of Public Works' Labor Compliance Program should be given in the Call for Bids and in the contract or purchase order and shall also be posted at the job site. Federal Labor requirements may also be noted. If more than one job site exists or where such posting would endanger public safety, the notice may be posted in the manner prescribed by Section 16100(b) of Title 8 of the California Code of Regulations.

The notice of an approved Labor Compliance Program shall contain, at the minimum, the effective date of the Director's approval, a statement whether the limited exemption from prevailing wages pursuant to Labor Code Section 1771.5(a) applies to contracts under the jurisdiction of the Labor Compliance Program, a telephone number to call for inquiries, questions, or assistance with regard to the Labor Compliance Officer, and the name of the agent or office administering the Labor Compliance Program.

ARTICLE III **JOB START MEETING**

After the County Department of Public Works awards the public works contract, and prior to the commencement of the work, the County Department of Public Works shall conduct a mandatory Job Start meeting (Pre-Construction conference), which shall be conducted by the Labor Compliance Officer or designee with the contractor and those subcontractors listed in the contractor's bid documents.

At that meeting, the Labor Compliance Officer or designee will discuss the federal and state labor law requirements applicable to the contract, including prevailing wage requirements, the respective record keeping responsibilities, the requirement for the submittal of certified payroll records to the County Department of Public Works, and the prohibition against discrimination in employment.

The Labor Compliance Officer or designee will provide the contractor and each subcontractor attending the Job Start Meeting with a Checklist of Labor Law Requirements (**attached hereto as Attachment A**) and shall discuss the items on the Checklist of Labor Law Requirements at the Job Start Meeting.

The contractors and subcontractors present at the Job Start meeting will be given the opportunity to ask questions of the LCO or designee relative to the items contained in the Checklist of Labor Law Requirements. The Checklist will then be signed by the contractor's representative and the County Department of Public Works' LCO or designee.

At the Job Start meeting, the LCO or designee will provide the contractor with a copy of the County Department of Public Works' LCP package which includes: a copy of the approved LCP, the Checklist of Labor Law Requirements, blank certified payroll record forms, fringe benefit statements, and state apprenticeship requirements. A copy of the Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1861) and Prevailing Wage Rate Determination may be obtained at the Department of Industrial Relations website (<http://www.dir.ca.gov/DLSR.html>) and is available for viewing at the County Department of Public Works' main office County Government Center Room 207, San Luis Obispo.

It will be the contractor's responsibility to provide copies of the LCP package to all listed subcontractors and to any substituted subcontractor performing work on a County Department of Public Works project.

ARTICLE IV
CONTRACTOR PAYROLL REQUIREMENTS; REVIEW AND AUDIT PROCEDURES

1. **Certified Payroll Records Required**

The contractor and each subcontractor shall maintain payrolls and basic payroll-related records (i.e. timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working on County Department of Public Works projects which are subject to the LCP. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, and actual wages paid. Time cards, front and back copies of cancelled checks, daily logs, employee sign-in sheets and/or any other records maintained for the purposes of reporting payroll may be requested by the LCO at any time and shall be provided within 10 days following the receipt of the request.

a. Submittal of Certified Payroll Records

The contractor and each subcontractor shall maintain weekly certified payroll records for submittal to the County Department of Public Works Labor Compliance Officer as required. The contractor shall be responsible for the submittal of payroll records of all its subcontractors. All certified payroll records shall be accompanied by a statement of compliance signed by the contractor or each subcontractor under penalty of perjury pursuant to Labor Code Section 1771.5, subdivision (b)(3) and applicable regulations indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the Director of the Department of Industrial Relations, and that the classifications set forth for each employee conform with the work performed.

The certified payroll records required by Labor Code Section 1776 may be maintained and submitted electronically if so called out in the contract document, and will be subject to all of the following conditions:

(i) The reports must contain all of the information required by Labor Code Section 1776, with the information organized in a manner that is similar or identical to how the information is reported on the Department of Industrial Relations' suggested "Public Works Payroll Reporting Form" (Form A-1-131) ;

(ii) The reports shall be in a format and use software that is readily accessible and available to contractors, the County Department of Public Works, the County Department of Public Works' Labor Compliance Program, and the Department of Industrial Relations;

(iii) Reports submitted to an awarding body, a Labor Compliance Program, the Division of Labor Standards Enforcement, or other entity within the Department of Industrial Relations must be either (1) in the form of a non-modifiable image or record that bears an electronic signature or includes a copy of any original certification made on paper, or alternatively (2) printed out and submitted on paper with an original signature;

(iv) The requirements for redacting certain information shall be followed when certified payroll records are disclosed to the public pursuant to Labor Code Section 1776(e), whether the records are provided electronically or as hard copies; and

(v) No contractor or subcontractor shall be mandated to submit or receive electronic reports when it otherwise lacks the resources or capacity to do so, nor shall any contractor or subcontractor be required to purchase or use proprietary software that is not generally available to the public.

b. Full Accountability

Each individual, laborer or craftsperson working on a public works contract must appear on the payroll. The basic concept is that the employer who pays the trades worker must report that individual on its payroll. This includes individuals working as apprentices in an apprentice able trade. Owner-operators are to be reported by the contractor employing them; rental equipment operators are to be reported by the rental company paying the workers' wages.

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked and the trade classification descriptive of the work actually done.

The contractor shall (i) provide the records required under this Section to the County Department of Public Works within five (5) days of each payday, and (ii) make available the records for inspection by the Department of Industrial Relations, and (iii) permit representatives of the San Luis Obispo County Department of Public Works and the Department of Industrial Relations to interview trades workers during working hours on the project site.

c. Responsibility for Subcontractors

The contractor shall be responsible for ensuring adherence to labor standards provisions by its subcontractors. Moreover, the prime contractor is responsible for Labor Code violations of its subcontractors in accordance with Labor Code Section 1775.

2. **Payment to Employees**

Employees shall be paid on a regular basis. An employer must establish a fixed workweek (Sunday through Saturday, for example) and payday (such as every Friday or the

preceding day should such payday fall on a holiday). On each and every payday, each worker must be paid all sums due as of the end of the preceding workweek and must be provided with an itemized wage statement.

If an individual is called a subcontractor, whereas in fact, he/she is merely a journey level mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the prime contractor as a trades worker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the general contractor for purposes of prevailing wage requirements, certified payroll reporting, and workers' compensation laws.

The worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the "Prevailing Wage Determinations" for the class of work actually performed. Any work performed on Saturday, Sunday, and/or on a holiday, or portion thereof, must be paid for hours worked in excess of eight (8) hours in a day and forty (40) hours in a workweek shall be premium pay. All work performed on Saturday, Sunday and holidays shall be paid pursuant to the Prevailing Wage Determination.

3. Apprentices

The Labor Compliance Program shall be responsible for enforcing prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner, including (A) that any contributions required pursuant to Labor Code Section 1777.5(m) are paid to the appropriate entity, (B) that apprentices are paid no less than the prevailing apprentice rate, (C) that workers listed and paid as apprentices on the certified payroll records are duly registered as apprentices with the Division of Apprenticeship Standards, and (D) requiring that the regular prevailing wage rate be paid (i) to any worker who is not a duly registered apprentice and (ii) for all hours in excess of the maximum ratio permitted under Labor Code Section 1777.5(g), as determined at the conclusion of the employing contractor or subcontractor's work on the public works contract.

Either the County Department of Public Works or the County Department of Public Works' Labor Compliance Officer acting on its behalf shall (A) inform contractors and subcontractors bidding public works about apprenticeship requirements, (B) send copies of awards and notices of discrepancies to the Division of Apprenticeship Standards as required under Section 1773.3 of the Labor Code, and (C) refer complaints and promptly report suspected violations of apprenticeship requirements to the Division of Apprenticeship Standards.

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered and approved by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journeypersons in any craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program.

Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the

classification of the work he/she actually performed. Pre-apprentice trainees, trainees in non-apprentice able crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journeypersons.

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

a. Submit contract award information to the Apprenticeship Committee for each apprentice able craft or trade in the area of the Project; and

b. Request dispatch of apprentices from the applicable Apprenticeship Program(s) and employ apprentices on public works projects in a ratio to journeypersons which in no case shall be less than one (1) hour of apprentice work to each five (5) hours of journeyperson work; and

c. Contribute to the applicable Apprenticeship Program(s) or the California Apprenticeship Council in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. If payments are not made to an Apprenticeship Program, they shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142.

If the contractor is registered to train apprentices, it shall furnish to the County Department of Public Works written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid there under for the area of construction, prior to using any apprentices in the contract work. It should be noted that a prior approval for a separate project does not confirm approval to train on any project. The contractor/subcontractor must check with the applicable Joint Apprenticeship Committee to verify status.

4. **Review and Audit of Certified Payroll Records**

The primary function of the County Department of Public Works Labor Compliance Program is to ensure that public works contractors comply with the prevailing wage requirements found in the Public Works Chapter of the Labor Code. This regulation is intended to establish minimum requirements which all Labor Compliance Programs shall meet or exceed in carrying out that function. Definitions found throughout this regulation are intended to provide Labor Compliance Programs and representatives of the Department of Industrial Relations and the Division of Labor Standards Enforcement with common terminology as they each perform their respective roles in prevailing wage enforcement in furtherance of the Labor Code provisions establishing Labor Compliance Programs. This regulation is also intended to confirm that the proactive investigation methods, as described in detail herein, only comprise the minimum obligations required of Labor Compliance Programs to satisfy their duty to the Director to operate a Labor Compliance Program as specified in Sections 16428 and 16434.

(i) Payroll records furnished by contractors and subcontractors in accordance with Section 16421(a)(3), and in a format prescribed at Section 16401 of Title 8 of the California Code of Regulations, shall be reviewed by the County Department of Public

Works' Labor Compliance Program as promptly as practicable after receipt thereof, but in no event more than 30 days after such receipt. "Review" for this purpose shall be defined as inspection of the records furnished to determine if (1) all appropriate data elements identified in Labor Code Section 1776(a) have been reported; (2) certification forms have been completed and signed in compliance with Labor Code Section 1776(b); and (3) the correct prevailing wage rates have been reported as paid for each classification of labor listed thereon with confirmation of payment as outlined below.

(ii) Representatives of the Labor Compliance Officer shall conduct in-person inspections at the site or sites at which the contract for public work is being performed ("On-Site Visits"). On-Site Visits may be undertaken randomly or as deemed necessary by the Labor Compliance Program, but shall be undertaken during each week that workers are present at sites at which the contract for public work is being performed. All On-Site Visits shall include visual inspection of (1) the copy of the determination(s) of the Director of Industrial Relations of the prevailing wage rate of per diem wages required to be posted at each job site in compliance with Labor Code Section 1773.2, and (2) the Notice of Labor Compliance Program Approval required to be posted at the job site in accordance with Section 16429 above, listing a telephone number to call for inquiries, questions, or assistance with regard to the Labor Compliance Program. On-Site Visits may include other activities deemed necessary by the Labor Compliance Program to independently corroborate prevailing wage payments reported on payroll records furnished by contractors and subcontractors.

(ii) "Confirmation" of payroll records furnished by contractors and subcontractors shall be defined as an independent corroboration of reported prevailing wage payments. Confirmation may be accomplished through worker interviews, examination of paychecks or paycheck stubs, direct confirmation of payments from third party recipients of "Employer Payments" (as defined at Section 16000 of Title 8 of the California Code of Regulations), or any other reasonable method of corroboration. For each month in which a contractor or subcontractor reports having workers employed on the public work, confirmation of furnished payroll records shall be undertaken randomly for at least one worker for at least one weekly period within that month. Confirmation shall also be undertaken whenever complaints from workers or other interested persons or other circumstances or information reasonably suggest to the County Department of Public Works' Labor Compliance Officer that payroll records furnished by a contractor or subcontractor are inaccurate.

An Audit, as defined herein, shall be prepared by the Labor Compliance Officer whenever the Labor Compliance Program has determined that there has been a violation of the Public Works Chapter of the Labor Code resulting in the underpayment of wages. An "Audit" for this purpose shall be defined as a written summary reflecting prevailing wage deficiencies for each underpaid worker, and including any penalties to be assessed under Labor Code Sections 1775 and 1813, as determined by the Labor Compliance Officer after consideration of the best information available as to actual hours worked, amounts paid, and classifications of workers employed in connection with the public work. Such available information may include, but is not limited to, worker interviews, complaints from workers or other interested persons, all time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a

person(s) by job classification and/or skill pursuant to a public works project. An Audit is sufficiently detailed when it enables the Labor Commissioner, if requested to determine the amount of forfeiture under Section 16437, to draw reasonable conclusions as to compliance with the requirements of the Public Works Chapter of the Labor Code, and to enable accurate computation of underpayments of wages to workers and of applicable penalties and forfeitures. An Audit using the forms in Appendix B, when accompanied by a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation and the basis upon which the determination of underpayment was made, presumptively demonstrates sufficiency. Records supporting an audit shall be maintained by the Labor Compliance Program to satisfy its burden of coming forward with evidence in administrative review proceedings under Labor Code Section 1742 and the Prevailing Wage Hearing Regulations found at Sections 17201-17270 of Title 8 of the California Code of Regulations.

After the Labor Compliance Officer has determined that violations of the prevailing wage laws have resulted in the underpayment of wages and an audit has been prepared, notification shall be provided to the contractor and affected subcontractor of an opportunity to resolve the wage deficiency prior to a determination of the amount of forfeiture by the Labor Commissioner pursuant to these regulations. The contractor and affected subcontractor shall be provided at least 10 days following such notification to submit exculpatory information consistent with the “good faith mistake” factors set forth in Labor Code Section 1775(a)(2)(A)(i) and (ii). If, based upon the contractor's submission, the Labor Compliance Officer reasonably concludes that the failure to pay the correct wages was a good faith mistake, and has no knowledge that the contractor and affected subcontractor have a prior record of failing to meet their prevailing wage obligations, the Labor Compliance Officer shall not be required to request the Labor Commissioner for a determination of the amount of penalties to be assessed under Labor Code Section 1775 if the underpayment of wages to workers is promptly corrected and proof of such payment is submitted to the Labor Compliance Officer. For each instance in which a wage deficiency is resolved in accordance with this regulation, the Labor Compliance Officer shall maintain a written record of the failure of the contractor or subcontractor to meet its prevailing wage obligation. The record shall identify the public works project, the contractor or affected subcontractor involved, and the gross amount of wages paid to workers to resolve the prevailing wage deficiency; and the record shall also include a copy of the Audit prepared pursuant to subpart (e) above along with any exculpatory information submitted to the Labor Compliance Officer by the affected contractor or subcontractor.

The audit record form (**attached hereto as Attachment B**) demonstrates the sufficient detail that is necessary to verify compliance with Labor Code requirements.

ARTICLE V

REPORTING OF WILLFUL VIOLATIONS TO THE LABOR COMMISSIONER

It is the San Luis Obispo County Department of Public Works’ policy that the public works prevailing wage requirements set forth in the Labor Code, Sections 1720 – 1861, be strictly enforced. Therefore, contractors and subcontractors found to be willful violators under Labor Code Section 1777.1 shall be referred to the Labor Commissioner for debarment from

bidding on or otherwise being awarded any public work contract in California for the performance of construction and/or maintenance services for a period not to exceed three (3) years in duration. The debarment period shall depend upon the nature and severity of the Labor Code violations and any mitigating and/or aggravating factors, which may be presented at the hearing conducted by the Labor Commissioner for such purpose.

If an investigation reveals that a willful violation of Labor Code Section 1777.1 has occurred, the Labor Compliance Officer or designee will make a written report to the County Department of Public Works and the Labor Commissioner which shall include: (1) an audit consisting of a comparison of payroll records to the best available information as to the actual hours worked and (2) the classification of workers employed on the public works contract. Six (6) types of willful violations shall be reported:

1. **Failure to Comply with Prevailing Wage Rate Requirements**

Failure to comply with prevailing wage rate requirements (as set forth in the Labor Code and County Department of Public Works contracts) is determined a willful violation whenever less than the stipulated basic hourly rate is paid to trades workers, or if overtime, holiday rates, fringe benefits, and/or employer payments are paid at a rate less than stipulated.

2. **Falsification of Payroll Records, Misclassification of Work, and/or Failure to Accurately Report Hours of Work**

Falsification of payroll records and failure to accurately report hours of work is characterized by deliberate underreporting of hours of work; underreporting the headcount; stating that the proper prevailing wage rate was paid when, in fact, it was not; clearly misclassifying the work performed by the worker; and any other deliberate and/or willful act which results in the falsification or inaccurate reporting of payroll records. Such violations are deemed to be willful violations committed with the intent to defraud.

3. **Failure to Submit Certified Payroll Records**

Contractors or subcontractors who refuse to comply with a request by the County Department of Public Works Labor Compliance Program for certified payroll reports or substantiating information and records will be determined to be in willful violation of the Labor Code. Additionally, refusal to correct inaccuracies or omissions that have been discovered will also be determined to be a willful violation of the Labor Code.

4. **For Failure to Pay Fringe Benefits**

Fringe benefits are defined as the amounts stipulated for employer payments or trust fund contributions and are determined to be part of the required prevailing wage rate. Failure to pay or provide fringe benefits and/or make trust fund contributions on a timely basis is equivalent to payment of less than the stipulated wage rate and shall be reported to the County Department of Public Works and the Labor Commissioner as a willful violation, upon completion of an investigation and audit.

5. **Failure to Pay the Correct Apprentice Rates and/or Misclassification of Workers as Apprentices**

Failure to pay the correct apprentice rate or classifying a worker as an apprentice when not properly registered is equivalent to payment of less than the stipulated wage rate and shall be reported to the County Department of Public Works and the Labor Commissioner as a willful violation, upon completion of an investigation and Audit.

6. **For the Taking of Kickbacks**

Accepting or extracting kickbacks from employee wages under Labor Code Section 1778 constitutes a felony and may be prosecuted by the appropriate enforcement agency.

ARTICLE VI
ENFORCEMENT ACTION

1. **Duty of the County Department of Public Works as the Awarding Body**

- a. Duty to Director of Department of Industrial Relations.

The San Luis Obispo County Department of Public Works' Labor Compliance Program has a duty to the Director of the Department of Industrial Relations to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code and Chapter 8 of Division 1 of the California Code of Regulations in a manner consistent with the practice of the Labor Commissioner (8 CA Code Reg 16434 A). It is the practice of the Labor Commissioner to refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions. These are available at the Department of Industrial Relations web site (www.dir.ca.gov) and the Division of Labor Statistics and Research link. It is also the practice of the Labor Commissioner to be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code Section 1742(b) and Sections 17201 – 17270 of Title 8 of the California Code of Regulations.

- b. Labor Compliance Program Record Keeping Duty

For each public work project subject to a Labor Compliance Program's enforcement of prevailing wage requirements, a separate, written summary of labor compliance activities and relevant facts pertaining to that particular project shall be maintained. That summary shall demonstrate that reasonable and sufficient efforts have been made to enforce prevailing wage requirements consistent with the practice of the Labor Commissioner. Compliance records for a project shall be retained until the later of (1) at least one year after the acceptance of the public work or five years after the cessation of all labor on a public work that has not been accepted, or (2) one year after a final decision or judgment in any litigation under Labor Code Section 1742. For purposes of this Section, a written summary or report includes information maintained electronically, provided that the summary or report can be printed out in hard copy form or is in an electronic format that (1) can be transmitted by e-mail or compact disk

and (2) would be acceptable for the filing of documents in a federal or state court of record within this state.

2. **Withholding Contract Payments When Payroll Records are Delinquent or Inadequate**

The County Department of Public Works shall withhold contract payments when payroll records are delinquent or inadequate or when, after an investigation, it is established that underpayment of the prevailing wage has occurred. Withholding of contract payments by a Labor Compliance Program, approved by the Department of Industrial Relations, is authorized by Labor Code Section 1771.6 and Title 8, California Code of Regulations, Section 16435, et seq. The County Department of Public Works' Labor Compliance Program will refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions.

a. "Withhold" means to cease payments by the Awarding Body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

b. Except as otherwise provided by agreement, only contracts under a single master contract, including a Design-Build contract, or contracts entered into as stages of a single project, may be the subject of withholding.

c. "Delinquent payroll records" means those not submitted on the date set in the County Department of Public Works contract and the Labor Compliance Program.

d. "Inadequate payroll records" are any one of the following:

(i) A record lacking any of the information required by Labor Code Section 1776;

(ii) A record which contains all of the required information but is not certified, or is certified by someone who is not an agent of the contractor or subcontractor;

(iii) A record remaining uncorrected for one payroll period, after the County Department of Public Works' Labor Compliance Officer has given the contractor or subcontractor notice of inaccuracies detected by audit or record review. However, prompt correction by contractor or subcontractor will stop any duty of County Department of Public Works to withhold if such inaccuracies do not amount to one (1) percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and Section 16401 of Title 8 of the California Code of Regulations.

e. The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code Section 1771.5, subdivision (b)(5), and it does not require the prior approval of the Labor Commissioner is not mandatory, however, the County Department of Public Works shall only withhold those payments due or estimated to be

due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the County Department of Public Works' LCP has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; *provided that* a contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Compliance Officer provides notice that the subcontractor has cured the delinquency or deficiency.

f. When contract payments are withheld under this Section, the Labor Compliance Officer shall provide the contractor and subcontractor (if applicable) with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, identifying what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies the amount being withheld; and (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Compliance Officer has exceeded its authority under this Section.

g. No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.

h. In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776, subdivision (g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776, subdivision (g) does require the prior approval of the Labor Commissioner under Section 16435 of Title 8 of the California Code of Regulations, which the Labor Compliance Officer shall obtain.

3. **Receipt of a Written Complaint**

Upon receipt of a written complaint alleging that a contractor or subcontractor has failed to pay prevailing wages as required by the Labor Code, the Labor Compliance Officer shall do all of the following:

a. Within 15 days after receipt of the complaint, send a written acknowledgment to the complaining party that the complaint has been received and identifying the name, address, and telephone number of the investigator assigned to the complaint;

b. Within 15 days after receipt of the complaint, provide the affected contractor with the notice required under Labor Code Section 1775, subdivision (c) if the complaint is against a subcontractor;

c. Notify the complaining party in writing of the resolution of the complaint within ten days after the complaint has been resolved by the Labor Compliance Officer;

d. Notify the complaining party in writing at least once every 30 days of the status of a complaint that has not been resolved by the Labor Compliance Officer; and

e. Notify the complaining party in writing at least once every 90 days of the status of a complaint that has been resolved by the Labor Compliance Officer but remains under review or in litigation before another entity.

4. **Withholding for Violation for Not Paying the Per Diem Prevailing Wage**

a. “Amount equal to the underpayment” is the total of the following determined by payroll review, audit, or admission of the contractor or subcontractor:

(i) The difference between the amounts paid to workers and the correct General Prevailing Wage Rate of Per Diem Wages as defined in Section 16000 et. seq. of Title 8 of the California Code of Regulations;

(ii) The difference between the amounts paid to workers and the correct amounts of employer payments, as defined in Section 16000 et seq. of Title 8 of the California Code of Regulations and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification, or trade in which they were employed and the amounts paid;

(iii) Estimated amounts of “illegal taking of wages”; and

(iv) Amounts of apprenticeship training contributions paid to neither the program sponsor’s training trust nor the California Apprenticeship Council.

b. Penalties under Labor Code Sections 1775 and 1813:

(i) Pursuant to Labor Code Section 1775, the contractor shall, as a penalty to the County Department of Public Works, forfeit up to two hundred (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages.

(ii) Pursuant to Labor Code Section 1813, the contractor shall, as a penalty to the County Department of Public Works, forfeit one hundred dollars (\$100) for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week.

5. **Forfeitures Requiring Approval by the Labor Commissioner**

Forfeitures are assessed by the Labor Compliance Officer for the violations of the prevailing wage laws and which are proposed to be withheld pursuant to Labor Code Section 1771.6(a). Forfeitures are assessed for the following (1) the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate by the contractor or subcontractor; and (2) penalties assessed under Labor Code Sections 1775, 1776 and 1813. If the aggregate amount of forfeitures assessed as to a contractor or subcontractor is less than \$1000.00, the forfeitures shall be deemed approved by the Labor Commissioner upon service

and the Labor Commissioner's receipt of copies of the following: (1) the Notice of Withholding of Contract Payments authorized by Labor Code Section 1771.6(a); (2) an Audit as defined in Section 16432(e) of these regulations, and (3) a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation, the basis of the underpayment, and the factors considered in determining the assessment of penalties, if any, under Labor Code Section 1775.

The Labor Compliance Officer shall request and obtain approval for all other forfeitures from the Labor Commissioner for failure to pay the correct rate of prevailing wages. Failure to pay the correct rate of prevailing wages means those public works violations which the Labor Commissioner has exclusive authority to approve before they are recoverable by the Labor Compliance Officer, and which are appealable by the contractor before the Director of the Department of Industrial Relations under Labor Code Sections 1742 and 1742.1 and pursuant to Sections 17201 through 17270 of Title 8 of the California Code of Regulations.

Regardless of what is defined as prevailing wages in contract terms, noncompliance with the following are considered failures to pay prevailing wages:

(i) Nonpayment of items defined as "Employer Payments" and "General Prevailing Rate of Per Diem Wages" in Section 16000 of Title 8 of the California Code of Regulations and Labor Code Section 1771;

(ii) Failure to provide complete and accurate payroll records, as required by Labor Code Section 1776;

(iii) Paying apprentice wages lower than the journey level rate to a worker who is not an apprentice as defined in Labor Code Section 3077, working under an apprentice agreement in a recognized program;

(iv) Accepting or extracting kickbacks, in violation of Labor Code Section 1778;

(v) Engaging in prohibited actions related to fees for registration as a public works employee, in violation of Labor Code Section 1779; and

(vi) Failure to pay overtime for work over eight (8) hours in any one day or forty (40) hours in any one week, in violation of Labor Code Sections 1813, 1815, Section 16200(a)(3)(F) of Title 8 of the California Code of Regulations.

6. **Determination of Amount of Forfeiture by the Labor Commissioner**

a. Where the Labor Compliance Officer requests a determination from the Labor Commissioner of the amount of forfeiture, the request shall include a file or report to the Labor Commissioner which contains at least the information specified in subparts (i) through (ix) below.

(i) Whether the public work has been accepted by the County Department of Public Works and whether a valid notice of completion has been filed, the dates if

any when those events occurred, and the amount of funds being held in retention by the County Department of Public Works;

(ii) Any other deadline which if missed would impede collection;

(iii) Evidence of violation, in narrative form;

(iv) Evidence of violation obtained under Title 8 of the California Code of Regulation Section 16432 and a copy of the Audit prepared in accordance with Title 8 of the California Code of Regulation Section 16432(e) setting forth the amounts of unpaid wages and applicable penalties;

(v) Evidence that before the request for forfeiture was sent to the Labor Commissioner (A) the contractor and subcontractor were given the opportunity to explain why there was no violation, or that any violation was caused by good faith mistake and promptly corrected when brought to the contractor or subcontractor's attention, and (B) the contractor and subcontractor either did not do so or failed to convince the Labor Compliance Officer of its position;

(vi) Where the Labor Compliance Officer seeks not only wages but also a penalty under Labor Code Section 1775 as part of the forfeiture, and the contractor or subcontractor has unsuccessfully contended that the cause of violation was a good faith mistake, a short statement should accompany the proposal for a forfeiture, with a recommended penalty amount pursuant to Labor Code Section 1775, Subdivision (a);

(vii) Where the Labor Compliance Officer seeks only wages or a penalty computed at less than \$200 per day as part of the forfeiture and the contractor or subcontractor has successfully contended that the cause of the violation was a good faith mistake that was promptly corrected when brought to the contractor or subcontractor's attention, the file should include the evidence as to the contractor or subcontractor's knowledge of his or her obligation, including the Labor Compliance Officer's communication to the contractor or subcontractor of the obligation in the bid invitations, the Job Start Meeting agenda and records, and any other notice given as part of the contracting process. If the amount of wages sought includes overtime, penalties under Labor Code Section 1813 should be computed at \$100 per day for each calendar day during which each worker was required or permitted to work more than eight (8) hours in any one calendar day and 40 hours in any one calendar week. With the file should be a statement, similar to that described in (vi above), and recommended penalty amounts, pursuant to Labor Code Section 1775, Subdivision (a);

(viii) The previous record of the contractor and subcontractor in meeting their prevailing wage obligations; and

(ix) Whether the Labor Compliance Officer has been granted approval on only an interim or temporary basis under Title 8 of California Code of Regulations Sections 16425 or 16426 or whether it has been granted extended approval under Section 16427.

b. The file or report shall be served on the Labor Commissioner as soon as practicable after the violation has been discovered, and not less than 30 days before the final

payment, but in no event not less than 30 days before the expiration of the limitations period set forth in Labor Code Section 1741.

c. A copy of the proposed forfeiture and the file or report shall be served on the contractor, and subcontractor if applicable, at the same time as it is sent to the Labor Commissioner. The Labor Compliance Officer may exclude from the documents served on the contractor and subcontractor copies of documents secured from the contractor or subcontractor during an Audit, investigation, or meeting if those are clearly referenced in the file or report.

d. The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to the wages and penalties due.

e. The Labor Commissioner's determination of the forfeiture is effective on one of the two following dates:

(i) For all programs other than those having extended authority under Title 8 of the California Code of Regulation Section 16427, on the date the Labor Commissioner serves by first class mail, on the Labor Compliance Officer, on the County Department of Public Works, on the contractor and on the subcontractor, if any, an endorsed copy of the proposed forfeiture, or a newly drafted forfeiture statement which sets out the amount of forfeiture approved. Service on the contractor or subcontractor is effective if made on the last address supplied by the contractor or subcontractor in the record. The Labor Commissioner's approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of receipt of the proposed forfeiture.

(ii) For programs with extended authority under Title 8 of the California Code of Regulation Section 16427, approval is effective 20 days after the requested forfeitures are served upon the Labor Commissioner, unless the Labor Commissioner serves a notice upon the parties, within that time period, that this forfeiture request is subject to further review. For such programs, a notice that approval will follow such a procedure will be included in the transmittal of the forfeiture request to the contractor. If the Labor Commissioner notifies the parties of a decision to undertake further review, the Labor Commissioner's final approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of the date of notice of further review.

7. Deposits of Penalties and Forfeitures Withheld

a. Where the involvement of the Labor Commissioner has been limited to a determination of the actual amount of penalty, forfeiture, or underpayment of wages, and the matter has been resolved without litigation by or against the Labor Commissioner, the County Department of Public Works shall deposit penalties and forfeitures into its General Fund.

b. Where collection of fines, penalties, or forfeitures results from court action to which the Labor Commissioner and the County Department of Public Works are both parties, the fines, penalties, or forfeitures shall be divided between the General Funds of the State of California and the County Department of Public Works, as the court may decide.

c. All amounts recovered by suit brought by the Labor Commissioner, and to which the County Department of Public Works is not a party, shall be deposited in the General Fund of the State of California.

d. All wages and benefits which belong to a worker and are withheld or collected from a contractor or subcontractor, either by withholding or as a result of court action pursuant to Labor Code Section 1775, and which have not been paid to the worker or irrevocably committed on the worker's behalf to a benefits fund, shall be deposited with the Labor Commissioner, who shall handle such wages and benefits in accordance with Labor Code Section 96.7.

ARTICLE VII
NOTICE OF WITHHOLDING OF CONTRACT PAYMENTS; REVIEW THEREOF;
AND SETTLEMENT AUTHORITY

1. **Notice of Withholding of Contract Payments**

After determination of the amount of forfeiture by the Labor Commissioner, the County Department of Public Works shall provide Notice of Withholding of contract payments ("Notice" or "NWCP") to the contractor and subcontractor, if applicable. The Notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the Notice shall be completed pursuant to Civil Procedure Code Section 1013 by first-class and certified mail to the contractor and subcontractor, if applicable. The Notice shall advise the contractor and subcontractor (if applicable) of the procedure for obtaining review of the withholding of contract payments. The County Department of Public Works shall also serve a copy of the Notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the Notice and to any surety on a bond, if their identities are known to the County Department of Public Works. A sample of the Notice of Withholding of Contract Payments to be utilized by the County Department of Public Works is **attached hereto as Attachment D.**

2. **Review of Notice of Withholding of Contract Payments**

a. An affected contractor or subcontractor may obtain a review of a NWCP by transmitting a written request for a review hearing to the Labor Compliance Officer within sixty (60) days after service of the NWCP. If no hearing is requested within sixty (60) days after service of the Notice, the NWCP shall become final.

b. Within ten (10) days following the receipt of the request for a review hearing, the Labor Compliance Officer shall transmit to the Office of the Director-Legal Unit the request for review and copies of the NWCP, any Audit summary that accompanied the notice, and a proof of service or other documents showing the name and address of any bonding company or surety that secures the payment of the wages covered by the notice. A copy of the required Notice of Transmittal to be utilized is **Attachment F** to this document.

c. The County Department of Public Works may be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code Section 17429, subdivision (b) and Sections 17201- 17270 of Title 8 of the California Code of Regulations.

d. Upon receipt of a timely request, a hearing shall be commenced within ninety (90) days before the Director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to Government Code Section 11502, Subdivision (b). The appointed hearing officer shall be an employee of the Department of Industrial Relations, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Compliance Officer at the hearing within twenty (20) days of the receipt of the written request for a hearing. Any evidence obtained by the Labor Compliance Program subsequent to the twenty (20) day cutoff shall be promptly disclosed to the contractor or subcontractor. A copy of a Notice of Opportunity to Review Evidence pursuant to Labor Code Section 1742(b) form attached hereto as **Attachment G**.

e. The contractor or subcontractor shall have the burden of proving that the basis for the NWCP is incorrect. The NWCP shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

f. Within forty five (45) days of the conclusion of the hearing, the Director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the Director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties pursuant to Code of Civil Procedure Section 1013 by first-class mail at the last known address of the party on file with the Labor Compliance Officer. Within fifteen (15)

days of the issuance of the decision, the Director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

g. The Director has adopted regulations setting forth procedures for hearings. The regulations (California Code of Regulations, Title 8, Chapter 8, Subchapter 6, Sections 17201-17270) may be found at www.dir.ca.gov and are available for review at the County Department of Public Works' office located at County Government Center Room 207, San Luis Obispo CA 93408.

h. An affected contractor or subcontractor may obtain review of the decision of the Director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Code of Civil Procedure Section 1094.5 within forty five (45) days after service of the decision. If no petition for writ of mandate is filed within forty five (45) days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

i. A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any County Department of Public Works in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

j. A judgment entered pursuant to this procedure shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this Section.

k. This procedure shall provide the exclusive method for review of a NWCP by the County Department of Public Works to withhold contract payments pursuant to Labor Code Section 1771.5.

l. Note that a release under Civil Code Section 3196 may not be posted for the release of funds being withheld for violations of the prevailing wage law.

3. **Settlement Authority**

A contractor or subcontractor may request a settlement meeting pursuant to Labor Code section 1742.1(b) and may request review of a Labor Compliance Program enforcement action in accordance with Labor Code Sections 1771.6(b) and 1742 and the regulations found at Sections 17201-17270 of Title 8 of the California Code of Regulations. The Labor Compliance Officer shall have the rights and responsibilities of the Enforcing Agency (as defined in Section 17202(f) of Title 8 of the California Code of Regulations), in responding to such a request for review, including but not limited to the obligations to serve notices, transmit the Request for Review to the hearing office, and provide an opportunity to review evidence in a timely manner, to participate through counsel in all hearing proceedings, and to meet the burden of establishing prima facie support for the Notice of Withholding of Contract Payments.

If a contractor or subcontractor seeks review of a Labor Compliance Program enforcement action, the Labor Commissioner may intervene to represent the Awarding Body, or to enforce relevant provisions of the Labor Code consistent with the practice of the Labor Commissioner, or both.

Except in cases where the Labor Commissioner has intervened pursuant to Title 8 California Code of Regulations, Section 16439 (b), the Labor Compliance Officer shall have the authority to prosecute, settle, or seek the dismissal of any NWCP issued pursuant to Labor Code Section 1771.6 and any review proceeding under Labor Code Section 1742, without any further need for approval by the Labor Commissioner. Whenever the LCP settles in whole or in part or seeks and obtains the dismissal of a NWCP or a review proceeding under Labor Code Section 1742, the Labor Compliance Officer shall document the reasons for the settlement or request for dismissal and shall make that documentation available to the Labor Commissioner upon request.

ARTICLE VIII
DISTRIBUTION OF FORFEITED SUMS

1. Before making payments to the contractor of money due under a contract for public work, the County Department of Public Works shall withhold and retain there from all amounts required to satisfy the NWCP. The amounts required to satisfy the NWCP shall not be disbursed by the County Department of Public Works until receipt of a final order that is no longer subject to judicial review.

2. From the amount withheld and/or recovered, the wage claim shall have priority status and be satisfied prior to the amount being applied to penalties. Thus, all workers employed on the public works project who are paid less than the prevailing wage rate shall have priority over all Stop Notices filed against the prime contractor. If insufficient money is withheld or recovered to pay each underpaid worker in full, the money shall be prorated among all workers affected. Workers employed on the public works project who are paid less than the prevailing wage rate shall have PRIORITY over any Stop Notice filed against the contractor pursuant to Civil Code Section 3179 et seq.

3. Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Fund and held in trust for the workers pursuant to Labor Code Section 96.7. Penalties shall be paid into the General Fund of the County Department of Public Works that has enforced this chapter pursuant to Labor Code Section 1771.5.

ARTICLE IX
OUTREACH ACTIVITIES

To ensure the successful implementation of the County Department of Public Works' LCP, there shall be several outreach activities initiated and maintained.

1. **Providing Information to the Public**

The Labor Compliance Officer or designee shall be responsible for communication and outreach activities relative to public information on the County Department of Public Works' Labor Compliance Program:

a. Regular presentations to contractors at all Job Start Meetings (Pre-Construction conferences).

b. Ongoing communication via correspondence and on site interviews with workers at County Department of Public Works job sites which are described in greater detail in the attached Operation Manual.

c. Periodic meetings with contractor organizations, prime contractors and subcontractors interested in public works contracting.

2. **In-service Management training on the LCP**

The Labor Compliance Officer or designee shall provide ongoing management inservicing and workshops for the administration of the Labor Compliance program.

ARTICLE X
ANNUAL REPORTS

A. Annual Report on Prevailing Wage

The County's Labor Compliance Officer will submit to the Director with copies to County Supervisors an annual report on prevailing wage monitoring in the format required by the DIR (LCP ARI) which will include the following information:

1. Progress report on the LCP in sufficient detail to afford a basis for evaluating the scope and level of enforcement activity of the LCP.
2. Annual reporting period (based on DIR designation)summary of:
 - a. Monitoring activities;
 - b. Record keeping activities;
 - c. Labor Code violations identified and reported to DLSE;
 - d. Statistical analysis of the prevailing wage violations on County public works projects;
 - e. Summary of outreach activities;
 - f. Certification of compliance with conflict of interest disclosure requirements as defined by Title 2, CA Code of Regulations Section 18701;
 - g. Current statement disclosing information required under Section 16426(a)2) and (5).

B. Annual Report on the LCP to the Director of the Department of Industrial Relations

The County's Labor Compliance Officer will submit to the Director of the Department of Industrial Relations an annual report on the operation of its LCP within (60) days after the end of its annual reporting period as designated by the DIR's approval of the LCP. The annual report shall be made on the appropriate form LCP-AR1 and will contain, as a minimum, the following information:

1. Number of public works contracts Awarded which are subject to prevailing wages and their total value.
2. A summary of wages due to workers resulting from failure by contractors to pay prevailing wage rates, the total amount withheld from money due the contractors and the total amount recovered by action in any court of competent jurisdiction.
3. A summary of penalties and forfeitures imposed and withheld or recovered in a court of competent jurisdiction.
4. A special summary of all audits that were conducted upon request of Labor Commissioner.
5. A certification of compliance with conflict of interest disclosure requirement by employees and consultants who participate in making governmental decisions, as

- defined under Title 2, CA Code of Regulations, Section 18701 and a current statement disclosing the information required under section 16426(a)(2), (3) and (5).
6. Information in the Annual Report shall be reported in sufficient detail to afford a basis to evaluate the scope and level of enforcement activity of the LCP. Copies of this report will be distributed to the Director of the Department of Industrial Relations and the Chief Operating Officer.

**CHECKLIST OF LABOR LAW REQUIREMENTS
FOR REVIEW AT JOB START MEETINGS
(In accordance with Section 16421 of Title 8 of the California Code of Regulations)**

The federal and state labor law requirements applicable to the contract are composed of, but not limited to, the following:

1. Payment of Prevailing Wage Rates

The award of a public works contract requires that all workers employed on the project be paid not less than the specified general prevailing wage rates by the contractor and its subcontractors pursuant to Labor Code Section 1770 et seq.

The contractor is responsible for obtaining and complying with all applicable general prevailing wage rates for trades workers and any rate changes, which may occur during the term of the contract. Prevailing wage rates and rate changes are to be posted at the job site for workers to view.

2. Apprentices

It is the duty of the contractor and subcontractors to employ registered apprentices on public works projects pursuant to Labor Code Section 1777.5.

3. Penalties

Penalties, including forfeitures and debarment, shall be imposed for contractor/subcontractor failure to pay prevailing wages, failure to maintain and submit accurate certified payroll records upon request, failure to employ apprentices, and for failure to pay employees for all hours worked at the correct prevailing wage rate, in accordance with Labor Code Sections 1775, 1776, 1777.7, and 1813.

4. Certified Payroll Records

Pursuant to Labor Code Section 1776, contractors and subcontractors are required to keep accurate payroll records which reflect the name, address, social security number, and work classification of each employee; the straight time and overtime hours worked each day and each week; the fringe benefits; and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee hired in connection with a public works project.

Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the contractor/subcontractor, or shall be furnished to any employee, or to his or her authorized representative on request.

Contractors and subcontractors shall maintain their certified payrolls on a weekly basis and shall submit said payrolls weekly to the LCO. In the event that there has been no work performed during a given week, the certified payroll record shall be annotated “No Work” for that week.

5. Nondiscrimination in Employment

Prohibitions against employment discrimination are contained in Labor Code Sections 1735 and 1777.6; the Government Code; the Public Contracts Code; and Title VII of the Civil Rights Act of 1964, as amended.

6. Kickback Prohibited

Pursuant to Labor Code Section 1778, contractors and subcontractors are prohibited from accepting, taking wages illegally, or extracting “kickback” from employee wages.

7. Acceptance of Fees Prohibited

Contractors and subcontractors are prohibited from exacting any type of fee for registering individuals for public work (Labor Code Section 1779); or for filling work orders on public works contracts (Labor Code Section 1780).

8. Listing of Subcontractors

Contractors are required to list all subcontractors hired to perform work on a public works project when that work is equivalent to more than one-half of one percent of the total effort (Public Contract Code Section 4104.).

9. Proper Licensing

Contractors and subcontractors are required to be properly licensed. Penalties will be imposed for employing workers while unlicensed (Labor Code Section 1021 and Business and Professions Code Section 7000, et seq. under California Contractors License Law).

10. Unfair Competition Prohibited

Contractors and subcontractors are prohibited from engaging in unfair competition (Business and Professions Code Sections 17200-17208).

11. Workers' Compensation Insurance

All contractors and subcontractors are required to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of Labor Code Sections 3700 and 1861.

12. OSHA

Contractors and subcontractors are required to comply with the Occupational Safety and Health laws and regulations applicable to the particular public works project.

13. Prohibition against hiring undocumented workers

Federal law prohibits contractors and subcontractors from hiring undocumented workers and requires all contractors and subcontractors to secure proof of eligibility/citizenship from all workers.

14. Itemized wage statements

Contractors and subcontractors are required to provide itemized wage statements to employees pursuant to Labor Code Section 226.

The undersigned contractor hereby acknowledges that the County Department of Public Works has provided the contractor with information regarding each item listed above. In accordance with federal and state laws, and with County Department of Public Works' policy and contract documents, the undersigned contractor herein certifies that it will comply with the foregoing labor law requirements; and fully understands that failure to comply with these requirements will subject it to the penalties cited herein.

For the Contractor:

For the County Department of Public Works:

Signature

Date

Signature

Date

AUDIT RECORD FORM
(For Use with Section 16432 of Title 8 of the
California Code of Regulations)

An audit record is sufficiently detailed to “verify compliance with the requirements of Chapter 1, Public Works, Part 7 of Division 2,” when the audit record displays that the following procedures have been followed:

1. Audit of the obligation to carry workers’ compensation insurance means producing written evidence of a binder issued by the carrier, or telephone or written inquiry to the Workers’ Compensation Insurance Rating Bureau;

2. Audit of the obligation to employ and train apprentices means inquiry to the program sponsor for the apprentice able craft or trade in the area of the public work as to: whether contract award information was received, including an estimate of journey person hours to be performed and the number of apprentices to be employed; whether apprentices have been requested, and whether the request has been met; whether the program sponsor knows of any amounts received from the contractor or subcontractor for the training fund or the California Apprenticeship Council; and whether persons listed on the certified payroll in that craft or trade being paid less than the journey person rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards;

3. Audit of the obligation to pass through amounts, made part of the bid, for apprenticeship training contributions to either the training trust or the California Apprenticeship Council, means asking for copies of checks remitted, or when the audit occurs more than thirty (30) days after the month in which payroll has been paid and copies of canceled checks remitted;

4. Audit of “illegal taking of wages” means inspection of written authorizations for deductions (as listed in Labor Code Section 224) in the contractor’s files and comparison to wage deduction statements furnished to employees (Labor Code Section 226), together with an interview of several employees as to any payments made which are not reflected on the wage deduction statements;

5. Audit of the obligation to keep records of working hours (8 CCR Section 16432), and pay not less than required for hours worked in excess of eight (8) hours/day and forty (40) hours/week (8 CCR Section 16200(a)(3)(F)), means review and audit of weekly certified payroll records;

6. Audit of the obligation to pay the prevailing per diem wage means review and audit of weekly-certified payroll records for compliance with:

a. All elements defined as the General Prevailing Rate of Per Diem Wages in Section 16000 et seq. of Title 8 of the California Code of Regulations, which were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the LCO's office and posted at the public works job site;

b. All elements defined as Employer Payments to Workers set forth in Section 16000 et. seq. of Title 8 of the California Code of Regulations, which were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the LCO's office and posted at the public works job site.

PREVAILING WAGE DETERMINATION SUMMARY

CODE NO.	CLASSIFICATION	HOURLY RATE		TRAINING	TIME 1/2	HOLIDAY / TRAVEL & SUNDAY SUBSISTENCE	Other Hourly Requirements
		Effective Date	Rate				
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							

WAGE DETERMINATION INFORMATION

CODE NO.	CLASSIFICATION	WAGE DETERMINATION NO.
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

TO:	TO:
Date:	In Reply Refer to Case No.:

Notice of Withholding of Contract Payments

Awarding Body	Work Performed in County of
Project Name	Contract No. / Project No.
Prime Contractor	
Subcontractor	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Labor Compliance Program of the County Department of Public Works has determined that the contractor and/or subcontractor identified above has committed violations of the California Labor Code. In accordance with Labor Code Sections 1771.5 and 1771.6, the County Department of Public Works hereby issue this Notice of Withholding of Contract Payments.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

- Failure to pay its workers the applicable prevailing wage rates

The County Department of Public Works LCO has determined that

- | | |
|---|----------------|
| 1) the total amount of wages due is: | \$ <u>0.00</u> |
| 2) the total amount of penalties assessed under Labor Code Sections 1775 and 1813 is: | \$ <u>0.00</u> |
| 3) the amount of penalties assessed under Labor Code Section 1776 is: | \$ <u>0.00</u> |
| 4) TOTAL WITHHOLD: | \$ 0.00 |

THE COUNTY DEPARTMENT OF PUBLIC WORKS
LABOR COMPLIANCE PROGRAM

By: _____
(Name, Title)

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code Sections 1742 and 1771.6, an affected contractor or subcontractor may obtain review of this Notice of Withholding of Contract Payments by transmitting a written request to the office of the Labor Compliance Program within 60 days after service of the notice. **To obtain a hearing, a written Request for Review form must be transmitted to the following address:** The San Luis Obispo County Department of Public Works, County Government Center Room 207, San Luis Obispo CA 93408. A Request for Review shall clearly identify the Notice of Withholding of Contract Payments from which review is sought, including the date of the notice (a copy of the notice shall be included as an attachment), and shall also set forth the basis upon which the notice is being contested.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order that shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety, Labor Code Section 1743.

The County Department of Public Works' Labor Compliance Manager shall acknowledge receipt of the Request for Review by sending the contractor and/or subcontractor a Notice of Opportunity to Review Evidence letter. The contractor and/or subcontractor must transmit the Request to Review Evidence letter to the Labor Compliance Manager. In accordance with Labor Code Section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the County Department of Public Works' Labor Compliance Manager at the hearing within 20 days of the County Department of Public Works receipt of the written Request for Review.

In accordance with Labor Code Section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any County in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

Opportunity for Settlement Meeting

In accordance with Labor Code Section 1742.1 (b), the County Department of Public Works Labor Compliance Manager shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of the Notice of Withholding of Contract Payments, afford the contractor or subcontractor the opportunity to meet with the Labor Compliance Program's designee **to attempt to settle a dispute regarding the notice**. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is **in addition** to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written **Request for Review** has already been made. Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested. A written request to meet with the Labor Compliance Program's designee to attempt to settle a dispute regarding this notice must be transmitted to the address in the first paragraph, above.

Labor Compliance Liquidated Damages

In accordance with Labor Code Section 1742.1 and/or by contract, after 60 days following the service of the Notice of Withholding of Contract Payments, the affected contractor, subcontractor, performance bond surety, and surety on a bond or bonds issued to secure the payment of wages covered by the notice shall be liable for labor compliance liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the notice subsequently is overturned or modified after administrative or judicial review, labor compliance liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor/subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

The amount of Labor Compliance Liquidated Damages available under this notice is **\$0.00**

[Name and Contact Information for person issuing Notice]	
Date:	Case or Contract No.:

NOTICE OF TEMPORARY WITHHOLDING OF CONTRACT PAYMENTS DUE TO DELINQUENT OR INADEQUATE PAYROLL RECORDS (8 CCR §16435)

Awarding Body:	Work performed in the of:
Project Name and Number (if any):	
Prime Contractor:	
Subcontractor:	

Pursuant to Labor Code §1771.5(b)(5) and 8 CCR §16435, contract payments are being withheld due to delinquent or inadequate payroll records.

Contractor or subcontractor whose payroll records are delinquent or inadequate:

-
- The following payroll records are delinquent (specify weeks and due dates):
- _____
- _____
- The following payroll records are inadequate (specify weeks and ways in which records are deemed inadequate under 8 CCR §16435(d)):
- _____
- _____

Estimated amount of contract payments due to contractor or subcontractor that are being withheld pursuant to this Notice: _____

See page 2 for additional information, including appeal rights.

Labor Compliance Officer

Prime Contractor Obligations: If contract payments are being withheld due to the delinquency or inadequacy of your subcontractor’s payroll records, you are required to cease all payments to that subcontractor until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.

Notice of Right to Obtain Review – Expedited Hearing

An affected contractor or subcontractor may request review an expedited hearing to review this Notice of Withholding of Contract Payments under Labor Code §1742. *The only issue in any such review proceeding is whether the specified payroll records are in fact delinquent or inadequate within the meaning of 8 CCR §16435 or whether the Labor Compliance Program has exceeded its authority under 8 CCR §16435.* **To obtain an expedited hearing, a written request must be transmitted to the both the Labor Compliance Program and to the Lead Hearing Officer for the Director of the Department of Industrial Relations, as follows:**

[Name of Labor Compliance Officer,
address, and fax number]

Office of the Director – Legal Unit
Attention: Lead Hearing Officer
Expedited Hearing Request
Fax to: (415) 703-4277

The request for expedited hearing should specify the basis for challenging this Notice and include a copy of this Notice as an attachment. The request should also identify and provide contact information for the person who will represent the contractor or subcontractor at the hearing.

Important Additional Information: This is a Notice of Temporary Withholding of Contract Payments for Delinquent or Inadequate Payroll Records *only*. This is *not* a determination of liability for wages or penalties under Labor Code §§1775 and 1776 or any other statute. *Contract payments cannot continue to be withheld pursuant to this notice, once the required records have been produced.* However, the contractor and subcontractor may still be subject to the assessment of back wages and penalties and the withholding of contract payments if, upon investigation, a determination is made that the contractor or subcontractor violated the public works requirements of the Labor Code.

This Notice only addresses rights and responsibilities under state law. Awarding bodies, labor compliance programs, and contractors may have other rights or responsibilities under federal or local law, where applicable, and may also have additional rights or remedies under the public works contract.

Enclosure – text of 8 CCR §16435

§16435. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate.

(a) *"Withhold" means to cease payments by the Awarding Body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.*

(b) *"Contracts." Except as otherwise provided by agreement, only contracts under a single master contract, including a Design-Build contract, or contracts entered into as stages of a single project, may be the subject of withholding.*

(c) *"Delinquent payroll records" means those not submitted on the date set in the contract.*

(d) *"Inadequate payroll records" are any one of the following:*

(1) *A record lacking any of the information required by Labor Code Section 1776;*

(2) *A record which contains all of the required information but is not certified, or is certified by someone who is not an agent of the contractor or subcontractor;*

(3) A record remaining uncorrected for one payroll period after the Labor Compliance Program has given the contractor or subcontractor notice of inaccuracies detected by audit or record review. However, prompt correction will stop any duty to withhold if such inaccuracies do not amount to one (1) percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and Section 16401 of Title 8 of the California Code of Regulations.

(e) The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code Section 1771.5(b)(5), and it does not require the prior approval of the Labor Commissioner. The Awarding Body shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Compliance Program has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; *provided that* a contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.

(f) When contract payments are withheld under this Section, the Labor Compliance Program shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies the amount being withheld; and (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Compliance Program has exceeded its authority under this Section.

(g) No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.

(h) In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(g) does require the prior approval of the Labor Commissioner under Section 16436 of these regulations.

LABOR COMPLIANCE PROGRAM <hr/> Review Office - Notice of Withholding of Contract Payments <hr/> <hr/> <hr/> Phone: Fax:	(SEAL)
Date:	In Reply Refer to Case No.:

Notice of Transmittal

To: Department of Industrial Relations
Office of the Director-Legal Unit
Attention: Lead Hearing Officer
P. O. Box 420603
San Francisco, CA 94142-0603

Enclosed herewith please find a Request for Review, dated _____, postmarked
_____, and received by this office on _____.

Also enclosed please find the following:

- ____ Copy of Notice of Withholding of Contract Payments
- ____ Copy of Audit Summary

LABOR COMPLIANCE PROGRAM

By: _____

cc: Prime Contractor
Subcontractor
Bonding Company

Please be advised that the Request for Review identified above has been received and transmitted to the address indicated. Please be further advised that the governing procedures applicable to these hearings are set forth at Title 8, California Code of Regulations Sections 17201-17270. These hearings are **not** governed by Chapter 5 of the Government Code, commencing with Section 11500.

TO: CONTRACTOR <i>Works</i>	FROM: The County Department of Public
<p>LABOR COMPLIANCE PROGRAM [Insert County Department of Public Works' Name] Review Office - Notice of Withholding of Contract Payments [Insert County Department of Public Works' Address] _____ _____ Phone: _____ Fax: _____</p>	In Reply Refer to Case No.: _____
Date: _____	

Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b)

To: Prime Contractor
[Insert Name]
[Insert Address]

 Subcontractor

Please be advised that this office has received your **Request for Review**, dated _____, and pertaining to the Notice of Withholding of Contract Payments issued by the Labor Compliance Program in Case No. _____.

In accordance with Labor Code Section 1742(b), this notice provides you with an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review, and the procedures for reviewing such evidence.

Rule 17224 of the Prevailing Wage Hearing Regulations provides as follows:

- (a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the affected contractor or subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing of the Request for Review.
- (b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the affected contractor or subcontractor the option at said party's own expense to either (i) obtain copies of all such evidence through a commercial copying service or (ii) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the affected contractor or subcontractor.

(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).

(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the affected contractor or subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code Section 1742(b) and this Rule, shall preclude the enforcing agency from introducing such evidence in proceedings before the Hearing officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the affected contractor or subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another party in the proceeding.

In accordance with the above Rule, please be advised that the Labor Compliance Program's procedure for you to exercise your opportunity to review evidence is as follows:

Within five calendar days of the date of this notice, please transmit the attached Request to Review Evidence to the following address:

[Insert County Department of Public Works' Name]
[Insert Address]

Attention: [Insert Labor Compliance Officer's Name]

TO: County Department of Public Works
CONTRACTOR

FROM:

Request to Review Evidence

To: **[Insert Labor Compliance Officer's Name]**
[Insert County Department of Public Works' Name]
[Insert County Department of Public Works' Address]

From: **[Contractor/Subcontractor Name]**
[Contractor/Subcontractor Address]

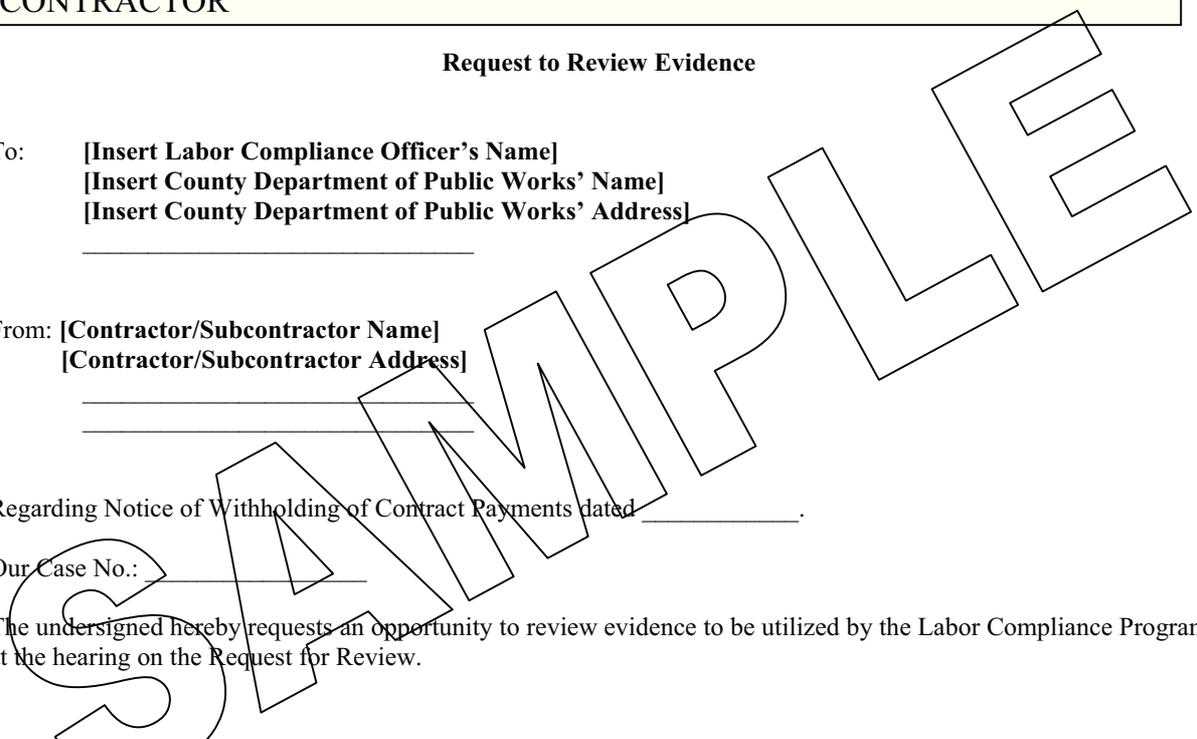
Regarding Notice of Withholding of Contract Payments dated _____.

Our Case No.: _____

The undersigned hereby requests an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review.

Phone No.: _____

Fax No.: _____



Project Information

FORM
Form Type: PWC-100 **Project Award Date:**
AWARDING BODY INFORMATION
Name: **Primary Contact:**
Address: **Primary Email:**
 Work Phone:

PROJECT INFORMATION

Project Name: **Project #:**
Brief Description: **Contract #:**
Contract Amount: **Number of Prime Contractors:**
Total Project Cost:
Alternative Model:
Physical Address: **Billing Address:**

Project Information 2

PWC-100
Project Name: **Project #:** **Contract #:** **Status:**

PROJECT INFORMATION

Project Dates
First Advertised Bid: **Estimated or Actual Start:**
Estimated or Actual Completion:

State Statutes	
State Bond Source	Estimated Bond Amount

Request for DIR/CMU Monitoring and Enforcement in order to qualify in the future for state bond funding for this project: No

Compliance and Agreements:

Is language included in the Contract Award to effectuate the requirements of Section 171, 1774 - 1776, 1777.5, 1813 and 1815 of the Labor Code? Yes
 Will you operate a DIR-Approved Labor Compliance Program(LCP) for this project? No
 Is there a Project Labor Agreement (PLA) associated with this project? No

Contractor Information

Project Superintendent/Construction Manager:

Email Address **Name** **Title** **Work Phone**

Project Manager

Email Address **Name** **Title** **Work Phone**

General Contractor1

CSLB/Certificate Number	NAME	Address	Email	Classification